

REMARKS

The Official Office Action, under mailing date October 12, 2005, has been studied. The said Office Action makes reference to . . . "The amendment document filed on 13 January 2004 . . .". It is respectfully submitted that there is no "amendment document" filed on 13 January 2004, in this application. The date 13 January, 2004 is the filing date of this application. It is respectfully submitted that the "amendment document" referred to, is an amendment document filed, in this application on August 16, 2005. The fact that the correct filing date of the amendment document referred to, is August 16, 2005, and not 13 January 2004, becomes obvious when the contents of the said Office Action, with mailing date, October 12, 2005, is considered. With the Examiner's permission, which is respectfully requested, Applicant will continue the current Amendment as if the said Office Action had identified the amendment document with the date 16 August, 2005. The contents of the Office Action, with mailing date October 12, 2005, has been studied and the Amendment filed August 16, 2005 has been reviewed in light of the Examiner's Remarks.

The Amendment filed on August 16, 2005 was in response to an Office Action under mailing date of 06/21/2005, received in two parts, in which each part was identical in content but were distinguishable by an identification at the bottom of an identically numbered page. This Amendment is intended as a response to both parts of the Official Office Action under mailing date October 12, 2005 and a response to the Official Office Action under mailing date 10/12/2005.

ATTORNEY ACKNOWLEDGMENT

Applicant's attorney acknowledges the telephone conferences had with the Examiner, on this application, on Monday, June 06, 2005 and on Tuesday, June 07, 2005

with respect to restriction and election. The 34 claims originally in this application were restricted into two groups, by the Examiner. Group I includes claims 1-13 and 22-34, Group II includes claims 14-21. In accordance with the Examiner's requirement, Applicant's Attorney elected to prosecute the claims in Group I, claims 1-13 and 22-34. The claims 14-21, in Group II, have been, and are hereby withdrawn from further consideration.

DRAWINGS

This application stands with the Figs. 5a and 7 objected to because, as alleged by the Examiner, both figures are exploded views. It is respectfully submitted the Fig. 5a is not an exploded view but rather an alternative embodiment of the invention. (see page 12 lines 1 and 2) It is respectfully requested that the Examiner reconsider his analysis of Fig. 5a and find that the figure is not an exploded view and should not be shown with bracket. Withdrawal of the objection to Fig. 5a appears to be in order and is respectfully requested.

With respect to Fig. 7, a REPLACEMENT SHEET DRAWINGS of Figs. 7 and 8 is presented herewith for replacement of the original drawing of Figs. 7 and 8. On the REPLACEMENT SHEET DRAWINGS, Figs. 7 and 8, Fig. 8 has a broken/dotted line 7-7 indicating that Fig. 7 is an exploded view of that part of Fig. 8. Fig. 7, the exploded view, has a bracket, as required by the Examiner. It is respectfully requested that the Examiner accept and enter the Replacement Sheet of drawings and substitute the Replacement Sheet of drawings of Figs. 7 and 8 for the original sheet of drawings of Figs. 7 and 8. It is respectfully requested that the Examiner withdraw his objection to the drawings.

SPECIFICATION

The Abstract of the disclosure stands objected to

because it exceeds 150 words. A new ABSTRACT, on separate sheet, is herewith submitted for replacement of the original sheet ABSTRACT. The substitute Abstract is on a separate sheet marked REPLACEMENT SHEET ABSTRACT. Please substitute the REPLACEMENT SHEET ABSTRACT for the original sheet on which the Abstract is written. It is respectfully requested that the Examiner accept and enter Replacement Sheet ABSTRACT and withdraw the objection to the specification.

CLAIMS STANDING

As examined, this application stands with 26 claims, claims 1-13 and 22-34. Claims 1, 7, 9, 10, 22 and 25 stand rejected under 35 U.S.C. 112, second paragraph. Claims 2-13 stand rejected as dependent upon rejected claim 1. Claims 23-34 stand rejected as being dependent on rejected claim 22. Claims 1, 2, 3, 5, 6, 22 and 23 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent #6,216,605 B1 to Chapman. Claims 4, 8, 9, 24 and 30 stand rejected under 35 U.S.C. 103(a), obviousness. Allowable subject matter has been found in claims 7, 10-13, 25-28 and 31-34.

SUMMARY OF AMENDMENTS

Claims 1, 4, 6-12 and 25-27 have each been amended, in accordance with the Examiner's Remarks, to overcome the rejection under 35 U.S.C. 112, second paragraph. It is believed these claims are clear and definite and are in condition for allowance. Claims 29, 30, 32 and 34 are amended to make each respective claim more clear. It is Applicant's position that the amendments to claim 1 also overcome the rejection of claim 1 and its dependent claims 2, 3, 5 and 6, under 35 U.S.C. 102(b), as being anticipated by the Chapman reference. Since amended claim 1 overcomes the 102(b) rejection, the rejection of the dependent claims 4, 8 and 9, under 35 U.S.C. 103(a) can not stand.

Claims 2-6, 8 and 9 are dependent on amended claim

1. Claims 7, 10 and 12 have each been amended and each is in independent form. Amended claim 11 is dependent on amended claim 10. Claim 13 is dependent on amended claim 12. Claims 22, 23 and 24 are cancelled. Claims 25, 26 and 27 have each been amended and each is in independent form. Claims 28, 33 and 34 are dependent on amended claim 27. Claims 29 and 30 are dependent on amended claim 25. Claims 31 and 32 are dependent on amended claim 26.

It is respectfully requested that the Examiner reconsider claims 1-13 and 25-34. It is respectfully submitted that amended claim 1 overcomes the rejection of being indefinite. Dependent claims 4, 6, 8 and 9 have also been amended. It is believed that amended claims 1, 2-6, 8 and 9 are each clear and definite and overcome the rejection under 35 U.S.C. 112, second paragraph. It is respectfully requested that the Examiner withdraw the rejection to these claims.

As amended, Claim 7 is clear and definite. Amended claim 7 recites all the limitations of its former base and intervening claims. It is respectfully submitted that amended claim 7 overcomes the rejection under 35 U.S.C. 112, second paragraph and is in condition for allowance. Allowance of amended claim 7 is respectfully requested.

As amended, claim 10 is clear and definite, reciting all the limitations of its base and intervening claims. Claim 11 has been amended to be dependent upon amended claim 10. Amended claim 12 is clear and definite and recites all the limitations of its base and intervening claims. Claim 13 is dependent on amended claim 12. It is respectfully requested that the Examiner reconsider claims 7 and 10-13 and withdraw the rejection against claims 7 and 10-13 and allow claims 7 and 10-13.

Claim 25 has been amended into independent form, reciting all the limitations of its base and

intervening claims. Amended claim 25 is clear and definite and overcomes the rejection under 35 U.S.C. 112, second paragraph and it is respectfully requested that the Examiner reconsider claim 25, withdraw the rejection and allow claim 25. Claims 29 and 30 are dependent on amended claim 25 and are allowable. Allowance of claims 29 and 30 is respectfully requested. Claim 26 has been amended into independent form. Amended claim 26 is clear and definite, reciting all limitations of its base and intervening claims. Claims 31 and 32 are dependent on amended claim 26 and are allowable. It is respectfully requested that the Examiner reconsider claims 26, 31 and 32 and allow these claims. Claim 27 has been amended into independent form. Amended claim 27 is clear and definite, reciting all the limitations of its base and intervening claims. Claims 28, 33 and 34 are dependent on amended claim 27 and clearly allowable. It is respectfully requested the Examiner reconsider claims 28, 33 and 34 and allow claims 27, 28, 33 and 34.

ARGUMENT ON 102 (b)

Claims 1, 2, 3, 5 and 6 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent #6,216,605 B1 issued to Chapman. It is the Examiner's position that the Chapman reference teaches a *retractable tether housing* (60) and a *tether* (60) with *an external mounting* (20). It is respectfully submitted that Chapman does not teach or show or anticipate a retractable tether housing. Chapman teaches a resilient tether, (see Chapman column 3, lines 2-3 which is not seen as a retractable tether housing member. In order to more clearly distinguish from the Chapman teaching, Applicant has amended claim 1 to recite:

. . .a retractable tether housing member for rotatably retracting a tether into said retractable tether housing member . . .

which is patentably distinguishable from the coiled or looped resilient tether, taught by the Chapman reference. The Chapman reference teaches a child's high chair tray. (See Chapman reference column 2 line 21) A child's high chair tray is not a salad bar, not the environment shown and described in Applicant's disclosure and recited in Applicant's claims. Applicant's claims are directed to an extendible serving utensil for serving food from a salad bar. This is an entirely different environment from the tray on a child's high chair. There is not one word in the Chapman reference that can be construed as anticipating the use of a retractable tether housing. The structure recited in amended claim 1 can not be found in the Chapman reference. It is respectfully requested that the Examiner reconsider his position, in the light of the above and withdraw the rejection of claims 1-3, 5 and 6 under 35 U.S.C. 102(b).

ARGUMENT ON 103(a)

Claim 4 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman. It is respectfully submitted that claim 4 is dependent on amended claim 1, which is believed to be patentable over Chapman and in allowable condition. Without the Chapman reference the 103(a) rejection of obviousness on claim 4 can not stand. Claim 4 has also been amended to more clearly recite,

. . . a pair of tongs for
serving food . . .

which in the environment of a child's high chair would not be used or found and would be out of place. The implements shown by Chapman are for a child's use. A child does not use a pair of tongs for serving food. It is respectfully submitted that claim 4 is patentable over the Chapman reference and is in allowable condition.

Claims 8, 9 and 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chapman in view of U.S. patent #2,308,771 to Mooney. Claims 8, 9 and 30 have each been amended. Claim 8 is dependent on amended claim 1, claim 9 is dependent on claim 8. It is believed that claims 8 and 9 are each patentably distinguishable over the Chapman reference and the 103(a) rejection can not stand. Further, it is not seen that it would be obvious to add the elements in the Mooney reference to the teachings of the Chapman reference as there is no incentive or suggestion or indication in either teaching to make such combination. In accordance with recent holdings in the Court of Appeals for the Federal Circuit, obviousness can not be established by combining the teachings of prior art to produce the claimed invention, absent some teaching or suggestion in the prior art which make the combination desirable. See *Carl Schench, A.G. v Nortron Corp.*, 218 U.S.P.Q. 698; and *In re Sernck*, 217 U.S.P.Q. 1; both citing *In re Imperato*, 179 U.S.P.Q. 730. See also *ACS Hospital Systems, Inc. v Montefiore Hospital*, 221 U.S.P.Q. 929, 933 where the Court states:

"Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under Section 103, teachings of references can be combined only if there is some suggestion or incentive to do so."

(Emphasis in the original.)

It is respectfully requested that the Examiner reconsider claim 8, 9 and 30 and find the claims allowable. Further, with respect to claim 30, this claim is dependent on amended claim 25, in which the Examiner has found allowable subject matter, and which

would be allowable if rewritten to overcome the rejection under 112, second paragraph. Accordingly, amended claim 25 has been rewritten and is clear and definite and is in independent form, reciting all the limitations of its former base claim and intervening claims. It is respectfully submitted that claim 25, as amended, is in allowable condition. Claim 30, dependent on claim 25, will also be found in allowable condition.

The Examiner has found allowable subject matter in claims 7, 10-13, 25-28 and 31-34. Claim 7 is discussed above. Claims 10 and 12 have each been amended into independent form, each with all the limitations of its respective base claim and intervening claims. Claims 10 and 12, as amended, are clear and definite, and each overcomes the 112, second paragraph rejection and each is believed in allowable condition. Claim 11 is amended to be dependent on claim 10 and claim 13 is dependent on claim 12. It is respectfully submitted that claims 10-13 are in condition for allowance.

Claims 25, 26 and 27, each containing allowable subject matter, have each been amended into independent form, each reciting all the limitations of its respective base and intervening claims. It is respectfully submitted that claims 25, 26 and 27 are clear and definite and each is in allowable condition. Claim 28 is dependent on claim 27 and is believed in allowable condition. Claims 29 and 30 have been amended and each is dependent on amended claim 25. It is respectfully submitted that 29 and 30 are clear and definite and in allowable condition. Claims 31 and 32 are each dependent on claim 26 and are believed clear and definite and in allowable condition. Claims 33 and 34 are each dependent on claim 27 and are believed to be clear and definite and in allowable condition.

It is respectfully submitted that in view of the above, claims 1-13 and 25-34 are in allowable condition and each is patentable over the prior art. Allowance of

claims 1-13 and 25-34 is respectfully requested.

This application was filed with a total of 34 claims, of which 4 were independent claims. The filing fee included a fee for 14 additional total claims and 1 additional independent claim. This application stands with a total of 23 claims, of which 7 are independent. No additional fee is required for the total number of the claims. However, there are three (3) additional independent claims, for an increase of \$300.00 in the independent claim fee. Applicant is a Small Entity and has Small Entity status. A check, #635, identified by S-1103 (Attorney Docket Number for this application) for \$300.00 was submitted with the Amendment filed on August 16, 2005, for payment of the additional fee. This check has been cashed by the Commissioner of Patents and a copy of the returned check is presented with this Amendment, as Appendix 3. No further payment is required, at this time.

The amendments to the drawings do not add new matter to this application. The amendments to the specification do not add new matter to this application. The amendments to the claims do not add new matter to this application.

It is respectfully requested that the Examiner accept this Amendment and enter this Amendment. It is respectfully requested that the Examiner reconsider the claims 1-13 and 25-34, find the claims in allowable condition, allow claims 1-13 and 25-34 and issue a Notice of Allowance on this application.

Respectfully submitted,



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In the Drawings:

Please amend the Drawings as follows:

Remove the sheet of drawings on which Figs. 7 and 8 are shown and replace and substitute with REPLACEMENT SHEET DRAWINGS, Figs. 7 and 8, submitted herewith.

Appendix 1 : REPLACEMENT SHEET DRAWINGS,
Figs. 7 and 8.